

REMARKS

As a preliminary matter, Applicants note that the Office Action of September 22, 2005 included claim 15 in Group IV which is, "...drawn to a method for treating cardiopathy using a pharmaceutical composition of recombinant vectors..." It appears, however, that the Examiner intended to include claim 14 and not claim 15 in Group IV. Accordingly, Applicants have made their election with the understanding that the inclusion of claim 15 in Group IV was a typographical error.

The Office Action requires that Applicants elect one Group from Groups I-IV and Applicants provisionally elect **Group I** (claims 1-6, 16, and 17) with **traverse**. Applicants respectfully request reconsideration of the Restriction Requirement in view of the following remarks concerning the election made herein.

Restriction between inventions is only proper when a search burden exists for the Examiner to search all the inventions claimed. If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to independent or distinct inventions. See M.P.E.P. § 803.01.

First, Applicants respectfully request that the Examiner examine at least Groups I and II together, because to practice the method of Group I, one can use the recombinant vectors of Group II. Therefore, a search of the subject matter of Group I, which can involve the use of vector which comprise a cyclin gene, would necessarily overlap with a search of the subject matter of Group II and does not constitute a search burden.

Second, Applicants respectfully request that the Examiner examine all four Groups together because they all encompass the subject matter of inducing a terminal differentiated cell to proliferate by means of a cyclin and a cyclin dependent kinase, whether as a method or a vector, cell, or pharmaceutical composition comprising this subject matter. For instance, the subject matter of the methods of Groups I and IV overlaps the use of the products of Groups II and III. The mammalian cell or tissue of Group III can be made by the method of Group I. And the method of Group I is a generic method containing subject matter which overlaps with the therapeutic method of Group IV. In addition, Groups II and IV share the same class and subclass (514/44) and Groups I and III share the same class (435). Therefore it is evident from the overlapping subject matter and class/subclass that a search of Groups I-IV does not constitute a search burden for the Examiner, because a search for a vector which comprises a cyclin gene

(Group II) would lead to a mammalian cell comprising a cyclin gene (Group III), and methods which can use it (Groups I and IV). See M.P.E.P. § 803.04.

In view of the above remarks, Applicants respectfully requests that the Restriction Requirement be withdrawn and that all claims be prosecuted in the same patent application. In the event that the requirement is made final and in order to comply with 37 C.F.R. § 1.143, Applicants reaffirm the election with **traverse** of Group I (claims 1-6, 16, and 17), holding claims 7-15 in abeyance under the provisions of 37 C.F.R. § 1.142(b) until final disposition of the elected claims.

CONCLUSION


Applicants maintain that the restriction requirement is improper and that all pending claims, *i.e.*, claims 1-17, should be examined for patentability. If the Examiner believes that prosecution might be advanced by discussing the application with Applicants' representatives, in person or over the telephone, we would welcome the opportunity to do so.

Respectfully submitted,

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